

**SUBMISSION TO THE SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS INQUIRY: SERIOUS ALLEGATIONS OF ABUSE, SELF-HARM AND NEGLECT OF
ASYLUM SEEKERS IN RELATION TO THE NAURU REGIONAL PROCESSING CENTRE, AND
ANY LIKE ALLEGATIONS IN RELATION TO THE MANUS REGIONAL PROCESSING CENTRE**

UNIVERSITY OF NEWCASTLE LEGAL CENTRE¹

Introduction

We thank the Committee for undertaking this Inquiry. This submission is put forward on behalf of the University of Newcastle Legal Centre (UNLC), which is a teaching and learning facility conducted by the Newcastle Law School and a community legal centre. During their academic studies, students of Newcastle Law School may simultaneously undertake the clinical training required for legal practice through the UNLC. In doing so, Newcastle law students have the opportunity to represent persons who are disadvantaged in dealing with the legal system and provide assistance to persons who may not otherwise be able to access legal advice.

The UNLC has a tradition of public interest casework. The UNLC has acted in high profile public interest cases involving possible miscarriages of justice and anti-discrimination cases. The UNLC acted for the family of Cornelia Rau in the Federal Government inquiry conducted by Mr Mick Palmer in 2005 which investigated the circumstances surrounding Ms Rau's detention. The student authors of this submission are or have previously studied the courses Public Interest Advocacy and/or Public International Law. Coursework and clinical work for these courses has required engagement with the rights of refugees and asylum seekers under international law and human rights law. The coordinators of those two courses have managed a collaborative and voluntary effort to attend to the full range of terms of reference set out by the Committee for this Inquiry.

Term of reference (a): the factors that have contributed to the abuse and self-harm alleged to have occurred

Nauru, a small island with a population of 10,000, lacks infrastructure and has a very hot climate. According to Robert Adler, a child psychiatrist who worked on the island, families are usually accommodated in large plastic marquees with no air conditioning or privacy and quite distant from toilets and washing facilities.² Many detainees feel confined or trapped, which in turn results in feelings of despair and hopelessness.³ 'Closed environments can become "total institutions" and have adverse effects on psychological and emotional functioning', which in turn can lead to suicidal

¹ This submission is the work of the authors named at the conclusion of the document. It should not be taken as the position of the University of Newcastle as a whole. Author for correspondence: Dr Amy Maguire, Amy.Maguire@newcastle.edu.au

² Robert Adler, 'One Psychiatrist's Experience Of Visiting Offshore Processing Centres for People Seeking Asylum in Australia' (2016) 24 *Australian Psychiatry* 23, 24

³ Nicholas G. Procter, Diego De Leo and Louise Newman, 'Suicide and Self Harm Prevention for People in Immigration Detention' (2013) 199 *Medical Journal of Australia* 730, 730.

ideation and self-harm.⁴ This is a continuing factor for asylum seekers on Nauru, regardless of whether or not they are still confined to the Refugee Processing Centre, as was made clear in the Amnesty International Report 'Island of Despair'.⁵

The *Suicide and Self-harm in the Immigration Detention Network* report published in 2013 by the Commonwealth and Immigration Ombudsman focused on the factors which impacted on the mental health of detainees and contributed to their self-harming behaviour. Such factors included: previous torture and trauma, fears for family, social isolation, the detention environment, overcrowding, a lack of autonomy, and uncertainty about the future.⁶ The Ombudsman's report found that suicide is the leading cause of premature death for detainees.⁷

Moreover, the lack of resolution of visa status and the prospect of indefinite detention contribute to desolation and increased feelings of hopelessness. Mental distress and despair have been found to be clinical correlations of being held in detention.⁸ In fact, there is a strong link between self-harming behaviour and the rise in average time spent in detention.⁹ The Australian Human Rights Commission's *Forgotten Children* Report (2014) also documented the high rates of psychiatric problems among children in detention, with morbidity increases associated with the length of detention time.¹⁰

After the leaking of the "Nauru files" in August 2016, the Immigration Minister Peter Dutton claimed that asylum seekers were self-harming as a means to get to Australia.¹¹ We dispute this analysis and argue that it elides the reality of the mental health circumstances experienced by people whose lives are controlled by Australia's offshore immigration detention regime. The release of the "Nauru files" by *The Guardian* further revealed that detainees have attempted to hide their self-harm from immigration authorities,¹² for fear that they may be punished.¹³

In 2013 non-suicidal self-injury (NSSI) was included as a 'condition for further study' in Diagnostic and Statistical Manual of Mental Disorders.¹⁴ Recognition in this universal authority for psychiatric diagnoses responded to calls from leading psychiatrists that self-harm be recognised as a mental

⁴ Ibid, 731.

⁵ Amnesty International, *Island of Despair: Australia's 'processing' of refugees on Nauru* (2016).

⁶ Commonwealth Ombudsman, *Suicide and self-harm in the Immigration Detention Network*, Report No. 02/2013 (2013) 37.

⁷ Ibid.

⁸ Above n 3, 730.

⁹ Above n 6, 2.

¹⁰ Australian Human Rights Commission. *The forgotten children: national inquiry into children in immigration detention* (2014).

¹¹ Stephanie Anderson, 'Peter Dutton says refugees self-harming to get to Australia, warns against Nauru abuse 'hype'', *ABC News* (online), 11 August 2016: <<http://www.abc.net.au/news/2016-08-11/dutton-says-refugees-%27self-harming%27-to-get-to-australia/7719450>>.

¹² NRPC Incident or Information Report SCA15. 0712, 13:45, 13/10/2015, *Transfield Services*. Available via: <<https://www.theguardian.com/australia-news/ng-interactive/2016/aug/10/the-nauru-files-the-lives-of-asylum-seekers-in-detention-detailed-in-a-unique-database-interactive>>

¹³ NRPC Incident or Information Report 300505, 06:10, 30/05/15, *Transfield Services*.

¹⁴ American Psychiatric Association. *Diagnostic and statistical manual of mental disorders (DSM-5®)*. American Psychiatric Pub, 2013.

health disorder. Professional medical opinion does not simply consider self-harm an undesirable act or behaviour, instead it considers it an *illness* that requires care and support in healing.¹⁵

The Australian Commission on Safety and Quality in Health Care recently introduced the National Safety and Quality Health Service Standards to implement the use of safety and quality systems and generally improve the quality of health service provision in Australia.¹⁶ We believe that the same standards should be applied to asylum seekers and refugees on Nauru and Manus Island. With suitable medical and mental health supports, as well as appropriate suicide prevention strategies, Australia can help prevent self-harm among detainees. Prolonged detention in poor conditions has been known to contribute to mental deterioration directly; however, the implementation of higher medical and living standards for detainees can help them reclaim their lives upon their release.¹⁷

Term of reference (b): How notifications of abuse and self-harm are investigated

The leaked incident reports of the 'Nauru Files' show that employees fill out an "Incident or Information Report" to record the details of reported incidents, including the date, time and location. Notably there is a 'Risk Rating' box that is required to be completed. It is evident that many of these incident reports are being downgraded by staff.¹⁸

Transfield/Broadspectrum use an 'Incident Report Matrix'¹⁹ to detail the procedures that must be taken by staff when abuses are reported. The Matrix provides that any incident of sexual assault is to be classified as 'Critical'. Examination of the 'Nauru files' reveals that a large number of sexual assault incidents were downgraded in classification. One example is an incidence of sexual assault on a child²⁰ which had originally been classified as 'critical'. This classification was subsequently crossed out and downgraded to 'major'. The incident was both downgraded in classification and downgraded from a sexual assault to an allegation of a sexual assault. Common to all incident reports from the leaked files is that the second page of these reports is not completed - the second page is the follow up/referral page stating what action was taken.

The Australian Government asserts that the Nauruan Police bear responsibility for the investigation of criminal incidents involving asylum seekers and refugees on Nauru. The Department of Immigration and Border Protection claims that 'all alleged criminal incidents within the regional processing centre are referred to the Nauru Police Force (NFP) for investigation'.²¹ While over 19 cases of sexual assault have been referred to the Nauruan Police, no prosecutions have been

¹⁵ Aine M Butler and Kevin Malone, 'Attempted Suicide v. Non-Suicidal Self-Injury: Behaviour, Syndrome or Diagnosis?' (2013) 202(5) *The British Journal of Psychiatry* 324.

¹⁶ *ACHS National Safety and Quality Health Service Standards* (2013) The Australian Council on Health Care Standards <<http://www.achs.org.au/achs-nsqhs-standards>>.

¹⁷ Above n 3, 732.

¹⁸ Wilsons/Save the Children Australia (Email) <<https://interactive.guim.co.uk/2016/08/nu-files/pdf/scadowngrade-2.pdf>>.

¹⁹ Transfield Services, Incident Report Matrix <<https://interactive.guim.co.uk/2016/08/nu-files/pdf/scadowngrade-2.pdf>>.

²⁰ NRPC Incident or Information Report (Control Ref: 1561.15) <<https://interactive.guim.co.uk/2016/08/nu-files/pdf/sca150051.pdf>>.

²¹ Department of Immigration and Border Protection, *The Nauru Files* (10 August 2016) DIBP Newsroom <<http://newsroom.border.gov.au/releases/the-nauru-files>>.

initiated.²² During the three years that the processing centre has been running, not one person has been charged with an offence against an asylum seeker.²³ This is extremely concerning, given the recent release of over 2000 incident reports, many of which relate to ill treatment and abuse. Further, owing to the secrecy provisions of the *Australian Border Force Act 2015* (Cth), it is very difficult for the Australian public to gain information regarding any investigations undertaken in response to reports of abuses. Amnesty International argues that these secrecy provisions perpetuate and entrench a system of abuse.²⁴

Both the Immigration Ombudsman and the Moss Review have previously made recommendations regarding the inadequacy of the delegation of complaint management to private contractors. These recommendations should be followed. Specifically:

1. Rigorous investigation systems must be implemented - including an objective third party to be involved in investigations, to minimise the chance of incident reports being improperly downgraded or ignored;
2. The Australian Government must work in co-operation with the Nauruan Police; and
3. Staff must receive further training and be adequately supervised in their management of abuse complaints.²⁵

Term of reference (c): the Obligations of the Commonwealth Government and contractors relating to the treatment of asylum seekers including the provision of support, capability and capacity building to local Nauruan authorities

Australia ratified the United Nations' *Convention Relating to the Status of Refugees* (the 'Refugee Convention') in 1954.²⁶ This convention, as well as a number of other treaties and conventions including the *International Covenant on Civil and Political Rights* (ICCPR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *Convention on the Rights of the Child* (CRC) set out Australia's international legal obligations to refugees and asylum seekers.

The Refugee Convention provides a number of 'basic standards' with regard to a state's treatment of asylum seekers. The Introductory Note to the Convention outlines that states have an obligation to ensure that asylum seekers have access to the courts, to primary education and to work. The Refugee Convention further affirms that states have an obligation to provide asylum seekers with

²² Ben Doherty, *Nauru Files: Review confirms 19 Police referrals over abuse claims, yet no prosecutions* (15 October 2016) The Guardian <<https://www.theguardian.com/australia-news/2016/oct/15/nauru-files-review-confirms-19-police-referrals-over-abuse-claims-yet-no-prosecutions>>.

²³ Ibid.

²⁴ Amnesty International, *Australian Government's Secretive System of Deliberate Abuse on Nauru* (2 August 2016) <<https://www.amnesty.org.au/australian-governments-secretive-system-of-deliberate-abuse-on-nauru/>>.

²⁵ As recommended by The Moss Review, *Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru* (6 February 2015) 85 <<https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf>>.

²⁶ Azadeh Dastyari, 'Explainer: Australia's obligations under the UN Refugee Convention', *The Conversation* (online) 18 July 2013 <<http://theconversation.com/explainer-australias-obligations-under-the-un-refugee-convention-16195>>.

documentation 'including a refugee travel document in passport form'.²⁷ Australia has also committed to the terms of the ICCPR and ICESCR which, amongst other things, include a commitment to ensuring that persons have access to enjoyment of all economic, social, cultural, civil and political rights set forth in the covenants.

On 5 February 2016, the United Nations High Commissioner for Refugees reiterated its position that 'Australia maintains responsibility for the protection of asylum seekers and refugees transferred to offshore processing centres under the existing bilateral arrangements with Nauru and Papua New Guinea'.²⁸ The geographical position of the asylum seekers in detention on Nauru does not remove Australia's responsibility or obligations under international law.²⁹ Australia does not have territorial jurisdiction over asylum seekers and refugees in Nauru, however, it retains effective jurisdiction over them.³⁰ States continue to be subject to human rights obligations where persons outside of their geographical territory are under their 'effective control'.³¹

Term of reference (d): the provision of support services for asylum seekers who have been alleged or been found to have been subject to abuse, neglect or self-harm in the Centres or within the community while residing in Nauru

The Australian Medical Association has observed that asylum seekers in offshore detention centres on Manus Island and Nauru are entitled to the same level of healthcare as Australian citizens and recommends that consideration be given to concerns specific to asylum seekers, including cultural, linguistic and health related matters³². Practically, this means that translation and interpretive services should be available as well as specialist medical practitioners, particularly mental health specialists, due to the high risk of psychological disorders such as post-traumatic stress disorder, anxiety and depression among asylum seekers in detention.

A 2016 Amnesty International report highlighted the inadequacy of medical services provided to asylum seekers detained on Nauru. Amnesty International also received evidence indicating that even when resources are readily available, the care is not adequate, timely, and patients are often left with anxiety and confusion about their health³³. Where certain medical services are not available on Nauru, refugees and asylum-seekers have had to wait months to see specialists even in the most

²⁷ *Convention and Protocol Relating to the Status of Refugees*, opened for signature 2 July 1951, UNHCR (entered into force 25 July 1951).

²⁸ United Nations High Commissioner for Refugees, *Detaining asylum seekers and refugees in offshore detention centres subject to international obligations, despite High Court decision*, Statement (5 February 2016).

²⁹ See the UK decision in *Al-Skeini et al. v United Kingdom* (2011) 53 EHRR 18 and International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, articles 4, 5 and 8.

³⁰ Amy Maguire, 'Accusations of Deliberate, Cruel Abuse of Refugee Children Must Prompt a More Humane Approach' (2016) *The Conversation* <<https://theconversation.com/accusations-of-deliberate-cruel-abuse-of-refugee-children-must-prompt-a-more-humane-approach-67154>>.

³¹ Madeline Gleeson, *Factsheet - Offshore processing: Australia's responsibility for asylum seekers and refugees in Nauru and Papua New Guinea* (8 April 2015) 3 <http://www.kaldorcentre.unsw.edu.au/sites/default/files/Factsheet_Offshore_processing_state_responsibility.pdf>.

³² Australian Medical Association, *Health Care of Asylum Seekers and Refugees - 2011* (Revised 2015), <<https://ama.com.au/position-statement/health-care-asylum-seekers-and-refugees-2011-revised-2015>>.

³³ Above n 5, 25

serious of cases.³⁴ Despite IMHS reporting the appointment of full-time psychiatrists, psychologists and mental health nurses on Nauru, asylum-seekers and refugees have reported that the principal response to their mental health issues has been the prescription of sedatives and antipsychotic medication which provide little ongoing relief and have severe side effects.³⁵ In some cases, individuals have been transported to Australia for health care, with some then returned to Nauru before the completion of their treatment.³⁶

Statistics on the mental health and wellbeing of child detainees are cause for particular alarm and highlight the fact that immigration detention is a dangerous place for children; out of the 54 children returned to Australia from Nauru this year as part of the 'Let Them Stay' campaign, 25 had been clinically diagnosed with mental illnesses including depression and anxiety, with a further five minors returning to Australia with long term medical conditions.³⁷ Further, Nauru's capacity for child protection is virtually non-existent. The nation adopted its first *Child Protection Act* in 2016, but has failed to implement a consistent and robust system for reporting and monitoring child protection.³⁸ Nauruan police officials have openly admitted that they 'do not keep data on reported cases of child abuse.'³⁹ Further, medical staff employed by the Republic of Nauru Hospital lack the required training to deal with cases of child abuse and they are not under a mandatory obligation to report suspected cases.⁴⁰

In light of these factors, we recommend:

1. Provision of necessary medical equipment and health care practitioners in Nauru;
2. Independent assessment of staff competency at the Republic of Nauru Hospital and the provision of necessary training;
3. Reforms to ensure that all cases of alleged abuse are reported and investigated;
4. Where persons are transferred to Australia, that they not be returned until their treatment is completed;
5. Family members be permitted to accompany persons transferred to Australia for treatment;
6. And an immediate end to the detention of asylum seeker children.

Term of reference (e): the role an independent children's advocate could play in ensuring the rights and interests of unaccompanied minors are protected

Australia ratified the Convention on the Rights of the Child (CRC) in 1990. The CRC is an agreed set of non-negotiable human rights standards and obligations. It sets minimum entitlements and freedoms which should be respected by state party governments.⁴¹ The fundamental principles of the convention are founded on respect for the dignity and worth of each child, 'irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid, 28

³⁷ Ben Doherty, 'Almost half children returned from Nauru have mental illness, Senate told', *The Guardian* (online), 21 April 2016 <<https://www.theguardian.com/australia-news/2016/apr/21/almost-half-of-children-returned-from-nauru-have-mental-illness-senate-told>>.

³⁸ Above n 5, 29.

³⁹ Ibid.

⁴⁰ Ibid, 30.

⁴¹ *Convention on the Rights of The Child*, opened for signature, ratification and accession on 20 November 1989, UNTS 44/25 (entered into force 2 September 1990).

opinion, national, ethnic or social origin, property, disability, birth or other status'.⁴² The core principles of the Convention give primacy to:

- the best interests of the child as a paramount consideration;
- non-discrimination;
- respect for the views of the child; and
- the child's right to survival, life and education.

Article 22 of the Convention specifically sets out that State parties shall take appropriate measures to ensure that asylum seeker children will receive appropriate protection and humanitarian assistance in the enjoyment of the rights under the Convention.

In September 2016, the United Nations Committee on the Rights of the Child found that Australia's refugee processes on Nauru breached the core principles of the Convention by:

- failing the best interest test,
- exposing children to severe mental health problems and increasing the occurrence of self-harm/suicidal ideation, and
- inflicting more harm on children who are already traumatised, including through abuse, intimidation, sexual assault and lack of proper health care.⁴³

Amnesty International's report titled *Island of Despair*, raised further concerns around the education of children on Nauru.⁴⁴ The report indicated that refugee children on the island had no proper access to education, and in fact many were forced to stop going to Nauruan schools for fear of violence and bullying from local students and teachers.⁴⁵

An independent children's advocate could play a significant role in addressing Australia's breaches under the Convention by ensuring the rights and interests of unaccompanied minors are protected. We propose that the independent children's advocate for unaccompanied minors in Nauru have the same responsibilities as the NSW Advocate for Children and Young People, which was established under the *Advocate for Children and Young People Act 2014*.⁴⁶ The NSW Advocate for Children and Young People promotes principles in line with Australia's obligations under the CRC, particularly:

- the safety, welfare and well-being of children and young people;
- the views of children and young people are to be given serious consideration and taken into account; and
- a co-operative relationship between children and young people and their families and communities is important for the safety, welfare and well-being of children and young people.⁴⁷

Term of reference (f): The effect of Part 6 of the Australian Border Force Act 2016

⁴² *Convention on the Rights of The Child*, art 2(1).

⁴³ UN Committee on the Rights of the Child, Concluding Observations on the Initial Report of Nauru (Advance Unedited Edition), 30 September 2016, UN Doc. CRC/C/NRU/CO/1, para 22
<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1041&Lang=en>.

⁴⁴ Above n5, 30.

⁴⁵ Ibid. See also ABC TV, 'The Forgotten Children', *Four Corners*, 17 October 2016
<<http://iview.abc.net.au/programs/four-corners/NC1604H038S00>>.

⁴⁶ *Advocate for Children and Young People Act 2014* (NSW).

⁴⁷ Advocate for Children and Young People, *About the Office of the NSW Advocate for Children and Young People* <<http://www.acyp.nsw.gov.au/about>>.

Subject to certain exceptions, Part 6 of the *Australian Border Force Act* makes it a criminal offence for an ‘entrusted person’ to make a record of or disclose ‘protected information’ that they have obtained in the course of their duties, but also, according to s 4(e), in any other capacity.⁴⁸ The Act provides very broad definitions of both ‘entrusted person’ and ‘protected information’, thereby establishing a wide range of potentially criminal behaviour. Accordingly, Part 6 may have the effect of discouraging or preventing entrusted persons from making records or disclosures that are in the public interest.

We note the recent insertion amendment of Part 6, which now exempts health professionals from the risk of prosecution for disclosing ‘protected information’.⁴⁹ Despite this amendment, however, a wide range of professionals – including teachers, lawyers, journalists and representatives of international organisations and NGOs – remain at risk should they speak out about abuse and human rights violations within Australia’s offshore immigration detention regime.

The operation and implications of Part 6 raise a number of concerns:

- In a context where detainees are suffering abuse and self-harm, it is fundamentally important that workers and others associated with their detention should not feel fearful, threatened or uncertain about making disclosures for the purpose of ensuring the detainees’ safety and protection;
- Part 6 unconscionably interferes with the right to freedom of expression under Article 19 of the ICCPR;
- Part 6 may violate the implied right to freedom of political communication under the Australian Constitution;
- Part 6 limits the extent to which the Australian public or concerned international actors can be confident of transparency, fairness and appropriate treatment of asylum seekers. In turn, this weakens Australia’s standing as an international citizen.⁵⁰

We recommend the removal of Part 6 of the Act. While Australia maintains this provision, which criminalises behaviour that would otherwise be required of such persons in ordinary circumstances within Australia, it is impossible to ensure the accountability that is essential to good governance.

Term of reference (g): attempts by the Commonwealth Government to negotiate third country resettlement of asylum seekers and refugees; and Term of reference (h): additional measures that could be implemented to expedite third country resettlement of asylum seekers and refugees within the Centres

Australia has made multiple recent attempts to arrange third country resettlement options. A 2011 proposal to resettle refugees in Malaysia was abandoned when the High Court found that Malaysia

⁴⁸ Section 42 *Australian Border Force Act 2015* (Cth).

⁴⁹ Australian Government Department of Immigration and Border Protection, ‘Determination of Immigration and Border Protection Workers- Amendment No. 1., Australia Border Force Act 2015’ (30 September 2016) <<https://www.border.gov.au/AccessandAccountability/Documents/determination-workers-c.pdf>>.

⁵⁰ Amy Maguire, ‘Why does international condemnation on human rights mean so little to Australia?’ in John Watson (Ed.), *The Conversation Yearbook 2016: 50 standout articles from Australia’s top thinkers* (2016, Melbourne University Press).

lacked the appropriate international or domestic legal safeguards to protect refugees.⁵¹ Australia's 2013 arrangement with Papua New Guinea provided only a short-term processing solution, rather than a long-term resettlement option. The 2014 agreement with Cambodia to resettle approximately 1,000 refugees has also failed, with only eight refugees taking up the initial offer and Cambodia proving incapable of providing adequate social supports.⁵² A 2015 proposal involving the Philippines was abandoned when it became clear that it was not a permanent settlement option.⁵³

Australia has rejected offers from New Zealand to resettle refugees currently on Nauru or Manus Island, on the basis that this may encourage people smuggling.⁵⁴ It is clear from this recent history that Australia has only sought to make resettlement arrangements with third countries that are poorly resourced to protect the rights of refugees or enable their social integration. Indeed, some of the countries approached by Australia have very poor human rights records with Cambodia in 2009 having forcibly deported 20 Chinese refugees, where upon return they were condemned to execution.⁵⁵

The United Nations High Commissioner for Refugees (UNHCR) recommends three possible solutions for refugees who have fled their country of origin. Of the three options advised, third country resettlement is the sole solution that Australia has considered.⁵⁶ Third country resettlement is undoubtedly a preferable option to the *refoulement* of refugees (the return of refugees to the site of their persecution, a practice that is absolutely prohibited under international law but which Australia has at times been accused of, particularly in the context of its boat 'turn-back' policy).⁵⁷

Conclusion – term of reference (i): any other related matters

In this submission we have addressed each of the terms of reference set by the Senate Committee. Across those terms of reference, we have noted a range of areas in which Australia is failing to adhere to its international legal and human rights obligations to refugees and people seeking asylum. However, as lawyers and law students, we are obliged to address a broader question. Through our scholarly research and clinical practice, we have determined that the system of

⁵¹ *Plaintiff M70/2011 v Minister for Immigration and Citizenship* [2011] HCA 32. See also: Human Rights Watch, *Australia: End Threat of Tawdry Refugee Trade* (May 26 2011) <<https://www.hrw.org/news/2011/05/26/australia-end-threat-tawdry-refugee-trade>>.

⁵² Julia Gillard (Prime Minister), 'Ties between Australia and New Zealand strengthened at annual leaders talks' (Media release, 9 February 2013) <<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F2221982%22>>.

⁵³ Anneliese McAuliffe, 'Australia running out of countries to send its refugees' *Al Jazeera* (online), 2 November 2015 <<http://www.aljazeera.com/indepth/features/2015/11/australia-running-countries-send-refugees-151101080825920.html>>.

⁵⁴ Stephanie Anderson, 'NZ has no plans to enter into refugee resettlement deal with Nauru', *ABC News* (online), 15 September 2016 <<http://www.abc.net.au/news/2016-09-15/dutton-leaves-door-open-for-refugee-resettlement-on-nz/7848088>>.

⁵⁵ Integrated Regional Information Networks, *Australia-Cambodia refugee deal sparks criticism*, 21 May 2014 <<http://www.refworld.org/docid/537f39924.html>>.

⁵⁶ United Nations High Commissioner for Refugees, *Solutions* (2016) <<http://www.unhcr.org/solutions.html>>.

⁵⁷ Amy Maguire, 'Australia's global reputation at stake in High Court asylum case', *The Conversation*, 9 July 2014 <<https://theconversation.com/australias-global-reputation-at-stake-in-high-court-asylum-case-28951>>, Amy Maguire, 'Australia can do better on Asian boat crisis than "nope, nope, nope"', *The Conversation*, 29 May 2015 <<https://theconversation.com/australia-can-do-better-on-asian-boat-crisis-than-nope-nope-nope-42255>>, Amy Maguire, 'Is it an offence if Australians pay people smugglers to turn back?', *The Conversation*, 11 June 2015 <<https://theconversation.com/is-it-an-offence-if-australians-pay-people-smugglers-to-turn-back-43054>>.

mandatory and indefinite offshore immigration detention is not capable of meeting either the human rights needs or the physical and mental health needs of persons subject to it. Further, this policy and the effective ban on the resettlement in Australia of any person seeking asylum by boat, prevents refugees and asylum seekers from gaining access to Australian courts.

We petition this Inquiry to conclude that Australia should:

1. End its policy of mandatory and indefinite offshore immigration detention for persons seeking asylum by boat;
2. Bring all people currently subject to that system on Nauru and Manus Island to Australia for processing and/or resettlement; and
3. Make third country resettlement arrangements, where required, in appropriate destination countries where the human rights of refugees can be assured in a comparable manner to those available to members of the Australian community.

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